

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL McCEE FOUNTAIN,

Petitioner,

No. CIV S-04-2350 GEB DAD P

vs.

JAMES YATES, Warden, et al.,

Respondents.

ORDER

Petitioner's application for a writ of habeas corpus has been fully briefed and is submitted for decision. Petitioner now seeks permission to expand the record to include an additional exhibit to his traverse. Petitioner states that his proposed Exhibit I is a true and authentic copy of "the original document as submitted by the California Department of Finance." The document presents annual population estimates by race or ethnicity in Yuba County between 1990 and 2000. Petitioner does not state whether this document was submitted to the state courts and, if so, whether it was submitted during trial, on appeal, or in habeas proceedings.

Under the federal rules that govern § 2254 proceedings, the court may permit the expansion of the record to include additional materials, such as exhibits, that relate to the petition. Rule 7, Fed. R. Governing § 2254 Cases. Petitioner claims that trial counsel provided ineffective assistance by failing to challenge the jury pool on race discrimination grounds.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Respondents' opposition or statement of non-opposition to petitioner's July 27,  
3 2005 motion to expand the record shall be filed and served within thirty days after this order is  
4 served; and

5 2. Petitioner's reply, if any, shall be filed and served within fifteen days after  
6 opposition is served.

7 DATED: September 15, 2005.

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10 DALE A. DROZD  
11 UNITED STATES MAGISTRATE JUDGE

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